Congressman Dennis Cardoza
STATEMENT
To the Subcommittee on Water Resources and the Environment
Regarding: H.R. 1749, the Pest Management and Fire Suppression Flexibility Act
Thursday, September 29, 2005

Thank you Chairman Duncan and Ranking Member Johnson for the invitation to testify on behalf of H.R. 1749, the Pest Management and Fire Suppression Flexibility Act.

As many of you know, in the early seventies, Congress enacted both the Clean Water Act and the Federal Insecticide, Fungicide, and Rodoenticide Act to better protect our environment and human health. The Clean Water Act authorized EPA to safeguard our nation's waterways from pollutants while FIFRA governed the proper labeling, distribution, sale and use of pesticides, insecticides and herbicides in order to protect people and the environment against adverse affects of pesticide use.

For years these two laws worked in tandem to provide a regulatory framework for pollutants and pesticides with little conflict since pesticide users were exempt from obtaining a Clean Water Act permit if they were applying the product according to label directions devised from a rigorous EPA registration process—a process whose goal is to allow for use of a pesticide in the most environmentally friendly manner. Unfortunately, due to two recent court decisions, the way these two landmark pieces of legislation interact is now under scrutiny.

In the 2001 *Headwaters, Inc. v. Talent Irrigation District*, the court ruled that an irrigation district applying a pesticide into an irrigation canal according to label directions was in violation of the Clean Water Act because it did not have a discharge permit. And in the 2002 *League of Wilderness Defenders vs. Forsgren* case the Court narrowed a longstanding EPA rule that exempted pest and fire control and other forestry activities from obtaining a permit for applying pesticides and fire retardants near waterways.

The legislation before you today, H.R. 1749 introduced by my colleague Congressman Otter, would clear up the confusion from these court cases, and other ones that are pending, by clarifying that using products registered under FIFRA and applied according to the label directions does not require the user to obtain a Clean Water Act permit. It would not give any user additional authority or clearance to circumvent a permit, but would only maintain the status quo that has been in effect, without problem, for over 30 years.

As Congressman Otter touched on the impacts of these recent court cases on agricultural uses and fire prevention, so I would like to direct my comments towards pest control—specifically mosquito abatement in order to show another sector of the economy that has been affected by these cases.

For those of you from urban centers you might not be as familiar with Mosquito Abatement Districts but in rural counties throughout the United States like my Congressional District, Mosquito Abatement Districts play an absolutely critical role in protecting residents, crops and livestock from mosquito borne illnesses. This is especially important in California as we are facing the second more deadly year of West Nile Virus infections.

As of September 23rd, 54 counties in California have reported West Nile Virus activity in California this year, 735 individuals have been infected with the virus and of that 735 there have been 15 fatalities. In addition to the human cases, 405 horses, 2,534 birds and 832 chickens have tested positive for West Nile Virus.

We are facing an epidemic in California and it is absurd to think that now, after 30 years of regulation under FIFRA, our 61 Mosquito Abatement Districts should be required to engage in a costly duplicative permitting process under the Clean Water Act in order to continue the practice of protecting human lives.

In addition, I want to clarify that FIFRA is not the only regulatory mechanism Mosquito Abatement Districts must comply with. In fact, California Mosquito Abatement Districts are regulated under a number of federal, state and local agencies including EPA, U.S. Fish and Wildlife, the California Department of Health Services, the California Department of Pesticide Regulation, the California Department of Fish and Game, and each County Department of Agriculture, Weights and Measures.

In January of this year, EPA published a rule that attempted to address uncertainty in the regulated community on whether or not they were required to obtain a Clean Water Act permit by clarifying application of pesticides in or near U.S. waters does not require a permit because those products that are regulated under FIFRA are not considered chemical wastes or biological materials as defined under the Clean Water Act.

While Congressman Otter and I are both very supportive the EPA's recent ruling, we feel that legislation from Congress is still needed in order to ensure farmers, irrigators, mosquito abatement districts, fire fighters, federal and state agencies, pest control operators or foresters can continue performing long-practiced pest management and public health protection activities.

I hope this Subcommittee can support H.R. 1749, the Pest Management and Fire Suppression Flexibility Act and provide those entities that have a responsibility to protect the public health to continue their work without the threat of litigation.

Thank you again Mr. Chairman and Ranking Member Johnson for the opportunity to testify today.